

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Verizon's Petition to Treat Unrecovered Local)	
Number Portability Costs as Exogenous Costs)	CC Docket No. 95-116
Under Section 61.45(d) or, in the Alternative,)	
For Limited Waiver of the End User Common)	
Line Caps in Section 69.152)	

**COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

RONALD K. CHEN
PUBLIC ADVOCATE

SEEMA M.SINGH, ESQ.
DIRECTOR AND RATE
COUNSEL
31 Clinton Street, 11th Floor
Newark, NJ 07102
(973) 648-2690 - Phone
(973) 648-2193 - Fax
www.rpa.state.nj.us

On the Comments:

Christopher J. White, Esq.
Deputy Ratepayer Advocate

Date: December 21, 2006

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Verizon's Petition to Treat Unrecovered Local)	
Number Portability Costs as Exogenous Costs)	CC Docket No. 95-116
Under Section 61.45(d) or, in the Alternative,)	
For Limited Waiver of the End User Common)	
Line Caps in Section 69.152)	

**COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

I. INTRODUCTION

In response to the Public Notice released on December 12, 2006,¹ the New Jersey Division of Rate Counsel ("Rate Counsel") hereby submits its comments as to DA 06-2490 and Verizon Telephone Companies' ("Verizon") petition asking for waiver with regard to certain Federal Communications Commission's ("FCC" or Commission") rules in connection with its claim for recovery of unrecovered Local Number Portability ("LNP") costs.

BACKGROUND

On November 16, 2006, Verizon filed a petition seeking a waiver from certain rules in order to permit Verizon to recover \$28 million of costs associated with LNP

¹/ See Public Notice, DA-06-2490, dated December 12, 2006, establishing pleading cycle with Comments due on January 9, 2007 and reply comments due on January 23, 2007.

implementation. Verizon asserts that an Order granted by the Wireline Competition Bureau on September 14, 2006 will provide it with substantial cost recovery but “will still leave Verizon unable to recover approximately \$28 million of its unrecovered LNP costs.”² Through its petition, Verizon requests that the Commission grant it “the additional waivers needed in order to complete the recovery process.”³ Specifically, Verizon seeks an additional waiver of section 61.45(d) that would extend relief provided in the *Verizon LNP Exogenous Cost Waiver Order* (“Order”) and allow Verizon “to treat as exogenous costs those LNP costs that remain unrecovered at the end of the 2006-07 access period.”⁴ In the alternative, Verizon requests a waiver of section 69.152, which establishes limits or caps on end-user common line (EUCL) charges, in order to allow Verizon to recover its remaining LNP costs through “a small increase to the EUCL charges in those jurisdictions” where end users were not previously assessed under the *Verizon LNP Exogenous Cost Waiver Order* because it would cause the EUCL charge to exceed the cap.⁵

SUMMARY

The petition filed by Verizon is without merit and should be denied. Verizon’s petition is untimely. If Verizon wanted to seek modification or change to the September

²/ Petition at 1-2 (citing *Verizon’s Petition for Waiver of the Commission’s Rules to Treat Unrecovered Local Number Portability Costs as Exogenous Costs under Section 61.45(d)*, CC Docket No. 95-116, Order, 21 FCC Rcd 10140, 10144-45, para. 10 & n.38 (Wireline Comp. Bur. Sept. 14, 2006), application for review pending) (*Verizon LNP Exogenous Cost Waiver Order*); see also Petition at 3-4.

³/ Petition at 2.

⁴/ Petition at 2, 7; 47 C.F.R. § 61.45(d).

⁵/ Petition at 2, 4, 11-12 (listing the areas where the EUCL cap would be exceeded); 47 C.F.R. § 69.152.

14, 2006, Verizon was required to seek relief within 30 days by filing an application for review.⁶ The *Order* is final at this time and may not be challenged by Verizon. The requested relief is a collateral attack on the *Order* which is not permitted under Commission precedent and case law. In addition, the relief sought under Section 69.152. can not be granted by waiver. The rate caps established under Section 69.152 were implemented as part of the Commissions action in adopting the CALLS proposal.⁷ There were compromises made and policies implemented based upon adoption of the CALLS proposal. Any revision would require a rulemaking to change. Such rulemaking must be done by the Commission and not by the Bureau. As a result, the petition should be dismissed on procedural grounds. With respect to the merits, Rate Counsel submits that neither waiver is in the public interest and that Verizon has not established good cause for a grant of any waiver. Essentially, Verizon has made a mistake in judgment and is asking to have the FCC condone such error by granting it yet another waiver, even though Verizon did not seek review of the Bureau *Order*. Rate Counsel opines that Verizon relies upon the *Order* to claim its entitlement to recover of LNP costs, but, the *Order* is subject to an application for review now pending before the Commission. For the reasons set forth in Rate Counsel's application for review and its reply, neither the underlying waiver nor the additional waivers requested in this petition are warranted or

^{6/} Alternatively, a party could have filed a request for reconsideration under Section 1.106 of the Commission's rules. Verizon did not file a request for reconsideration. All the time periods for filing for review of the Order by anyone other than Rate Counsel has expired.

^{7/} The Coalition for Affordable Local and Long Distance Service ("CALLS") proposed and the FCC adopted an integrated interstate access reform and universal service proposal in order to bring lower rates and less confusion to consumers and to create a more rational interstate rate structure. See Calls Order, FCC 00-193, released May 31, 2000.

appropriate.⁸

II. INTEREST OF THE RATE COUNSEL IN THE INSTANT PROCEEDING.

Effective July 1, 2006, the New Jersey Division of the Ratepayer Advocate is now the Rate Counsel. The office of Rate Counsel is a Division within the New Jersey Department of the Public Advocate. The Department of the Public Advocate is a government agency that gives a voice to New Jersey citizens who often lack adequate representation in our political system. The Department of the Public Advocate was originally established in 1974, but it was abolished by the New Jersey State Legislature and New Jersey Governor Whitman in 1994. The Division of the Ratepayer Advocate was established in 1994 through enactment of Governor Christine Todd Whitman's Reorganization Plan. See New Jersey Reorganization Plan 001-1994, codified at N.J.S.A. 13:1D-1, et seq. The mission of the Ratepayer Advocate is to make sure that all classes of utility consumers receive safe, adequate and proper utility service at affordable rates that are just and nondiscriminatory. In addition, the Ratepayer Advocate works to insure that all consumers are knowledgeable about the choices they have in the emerging age of utility competition. The Department of the Public Advocate was reconstituted as a principal executive department of the State on January 17, 2006, pursuant to the Public Advocate Restoration Act of 2005, P.L. 2005, c. 155 (N.J.S.A. §§ 52:27EE-1 et seq.). The Department is authorized by statute to "represent the public interest in such administrative and court proceedings . . . as the Public Advocate deems shall best serve the public interest," N.J.S.A. § 52:27EE-57, i.e., an "interest or right arising from the

^{8/} Rate Counsel filed its application for review on October 5, 2006 and filed its reply on October 25, 2006 to the opposition filed by Verizon on October 20, 2006. No action by the Commission has been taken on this application for review.

Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens.” N.J.S.A. §52:27EE-12, and the office of the Rate Counsel, formerly known as the Ratepayer Advocate, became a division therein to continue its mission of protecting New Jersey ratepayers in utility matters. The Division of Rate Counsel represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. The Rate Counsel participates in Federal and state administrative and judicial proceedings.

III. THE COMMISSION SHOULD DISMISS THE PETITION AS UNTIMELY AND PROCEDURALLY DEFICIENT.

Verizon’s petition is simply untimely and should be dismissed. Verizon simply failed to seek review of the *Order* and is now precluded from attacking the *Order* through the filing of its petition.

IV. THE COMMISSION SHOULD DENY VERIZON’S WAIVER REQUESTS.

Notwithstanding the procedural defects that warrant dismissal of the petition, Rate Counsel submits that Verizon has failed to justify, demonstrate and show good cause for the grant of the requested waivers.

The Commission may waive its regulations for good cause shown.⁹ Verizon has failed to demonstrate that a waiver is warranted. Rate Counsel incorporates by reference the arguments raised in its application for review filed on October 5, 2006 and in its reply filed on October 25, 2006 to Verizon’s opposition. Those arguments fully support Rate Counsel’s request that the waivers be denied. In addition, the Commission cannot grant a

⁹ / 47 C.F.R. § 1.3

waiver of Section 69.152 absent conducting a rulemaking. A petition for waiver cannot be used to modify the integrated plan adopted by the Commission when the CALLS proposal was accepted.

V. CONCLUSION

The Commission should dismiss the petition as untimely in the first instance. Absent dismissal, the Commission should deny Verizon's request for waivers for the reasons discussed above. Ultimately, the grant of any relief would harm ratepayers by asking them to pay for Verizon's error in judgment. Such a result is manifestly unjust to ratepayers and contrary to the public interest. Therefore, Rate Counsel urges that the FCC deny the petition.

Respectfully submitted,

RONALD K. CHEN
PUBLIC ADVOCATE

SEEMA M. SINGH, ESQ.
DIRECTOR AND RATE COUNSEL

By: *Christopher J. White*
Christopher J. White, Esq.
Deputy Public Advocate

Dated: December 21, 2006